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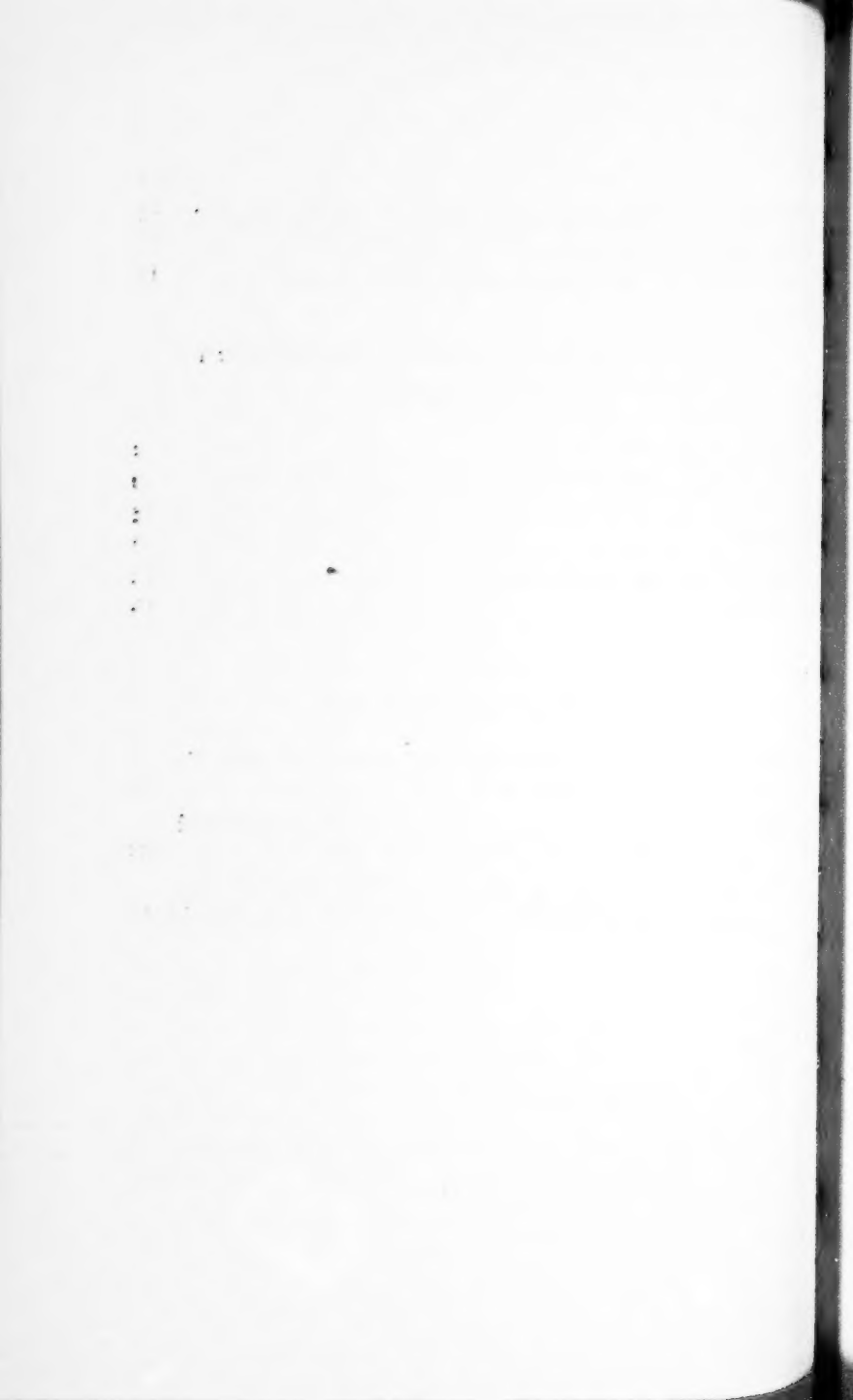
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925.

No. 170.

THE CHESAPEAKE AND OHIO RAILWAY
COMPANY,

Petitioner,

vs.

WESTINGHOUSE, CHURCH, KERR & CO., INC.

No. 171.

WALKER D. HINES, LATE DIRECTOR
GENERAL OF RAILROADS,

Petitioner,

vs.

WESTINGHOUSE, CHURCH, KERR & CO., INC.

ON WRITS OF CERTIORARI TO THE SUPREME
COURT OF APPEALS OF THE STATE
OF VIRGINIA.

BRIEF FOR PETITIONERS

PRELIMINARY STATEMENT.

These are writs of certiorari awarded on October 27, 1924, (R., p. 132) to final judgments of the Supreme

Court of Appeals of Virginia, entered June 26, 1924, (R., p. 117), affirming judgments of the Circuit Court of the City of Richmond, denying a recovery of petitioners in actions at law for amounts due as rental for the services of an engine and crew under a contract. (R., p. 2.)

The identical contract was involved in both cases and they were tried together on the same evidence and were disposed of by the Supreme Court of Appeals in a single opinion (R., p. 112; 138 Va. 647). A petition for rehearing was entertained but a rehearing was denied on August 14, 1924. (R., p. 125.)

The necessity for two actions was brought about by the intervention of Federal control of the carrier.

GROUND OF JURISDICTION.

The lower courts declared the contract void because the service rendered respondent by the engine and crew was "the precise service which the Company [petitioners] was then under immediate obligation to perform" under interstate tariffs (R., p. 116, 117) upon which reliance was made as furnishing the supposed defence (R., pp. 187, 82). The shipments involved, with immaterial exceptions, were interstate (R. p. 47).

The holding involved a construction of interstate freight tariffs and the Interstate Commerce Act, believed to be erroneous and in conflict with rulings of the Interstate Commerce Commission.

The following decisions support the jurisdiction of

this Court, by certiorari, under Section 237 of the Judicial Code:

Davis v. Cornwell, 264 U. S. 560;

Kansas City Southern R. Co. v. Van Zant, 260 U. S. 459;

Schaff v. Famechon Co., 258 U. S. 76.

STATEMENT OF THE CASE.

Respondent, on August 16, 1917, after the declaration of war, contracted with the United States Government for the construction of embarkation facilities at the port of Newport News, Virginia. (R., p. 96.) The contract eventually included the construction of two embarkation camps: Camp Hill and Camp Stuart. The former was only a short distance from petitioner's tracks, and paralleled them for about a mile, while the latter was distant about three miles therefrom. (R., p. 19.)

The first part of September, 1917, respondent's representatives came to Newport News to commence work under the contract. Side tracks were forthwith constructed to these camp sites by the carrier in conjunction with respondent and a large number of tracks were constructed within the camps by respondent itself. (R., pp. 20, 21.) Prior to respondent's arrival at Newport News to carry out the contract with the government, construction material had been ordered and some of it was already on the yards of the carrier. (R., p. 45.) Thereafter, cars of material began to arrive in increasing quantities; they came in "at two ends of the town * * * over floats from Norfolk

and from Richmond through the north yards" (R., p. 45) and were arriving in "regular flocks" (R., p. 71) and at the rate of 200 or 300 cars a day (R., p. 46). Respondent's organization was enormous and they employed in their works, at one time, from 6,000 to 8,000 men (R., p. 56).

The facilities of the carrier were inadequate to meet this large increase of traffic thus suddenly thrust upon it.

At first the carrier was able to make satisfactory deliveries of the cars, but as the business increased respondent experienced "more and more difficulty in obtaining the necessary service on the tracks" (R., p. 45). "It was not a case of their [the carrier] not wanting to deliver; it was a case of being impossible to deliver * * *". (R., p. 46.)

Numerous conferences were held from time to time by representatives of the parties with a view of relieving the situation, participated in by the construction officers of the War Department (R., p. 71), and it developed that the only feasible way to give respondent the service it desired was by assigning a locomotive to it for its exclusive use in handling its shipments. (R., pp. 45, 65.)

Thereupon the following letters passed between the parties constituting the contract sued on (R., p. 2):

CORRESPONDENCE CONSTITUTING CONTRACT SUED ON.

WESTINGHOUSE, CHURCH, KERR & CO.,
INC.

ENGINEERS AND CONSTRUCTORS.

Newport News, Va.,
September 28, 1917.

Chesapeake & Ohio Railroad Co.,
Newport News, Va.

Attention Mr. Ford, Supt. of Terminal. 1892-6.
Gentlemen:—

Referring to our conversation with you to-day, we believe the switching problem is getting so heavy on account of the work at the various sites that it would be advisable for you to assign us an engine and crew on your usual basis, billing us for the cost of operation as you may elect.

We would appreciate it if you would arrange for this engine and crew at the earliest possible moment, and also advise us if there is anything we can do towards helping out in furnishing a crew for this engine. ✓

Yours very truly,
WESTINGHOUSE, CHURCH, KERR &
COMPANY,
Alfred W. Bowie, Engineer in Charge.
AWB—JCC. ✓

Newport News, Va.,
September 29, 1917.

Westinghouse, Church, Kerr & Company,
Newport News, Va.

Gentlemen:

Your letter of the 28th inst. under file 1892-6, with respect to providing an engine and crew to take care of your business at the various camp sites.

~~11/11/11~~
Beg to state that this engine will be assigned to your work, commencing Monday night and you will be billed for the use of the engine and crew, together with the cost of supplies, repairs, etc., plus ten per cent.

Yours very truly,
(Signed) E. I. Ford, Superintendent.

B.

✓ The letter of respondent asked that the engine and crew be assigned by the carrier on its "usual basis." The usual basis for such service is shown in a circular governing charges for "equipment rentals" (R., pp. 22, 23, 83). The bills for the service here were based on this circular, with the exception that a 10 per cent supervision charge was made instead of the 25 per cent for such charge, which was permissible under the circular. This was done in conformity with carrier's letter to respondent (R., p. 22) which was an inadvertence—but of course respondent has no complaint as to this.

Immediately after the correspondence an engine and a day and night crew were turned over to respondent and thereafter was under its exclusive direction and control (R., pp. 23, 49, 60, 62). Subsequently another engine and crew were assigned respondent on the same terms—but that transaction is not involved here (R., p. 25).

As originally intended, the engine was to supplement the carriers' service in delivering the cars on specified tracks, but this was found to be impossible and the "locomotive performance gradually grew up" (R., p. 46) and it was eventually used in picking out

respondent's cars from incoming trains and switching them in made-up trains to the camps and returning the empty cars to the carrier—that is, it performed what is technically known as “spotting” service (R., p. 46). Respondent furnished a yard master and clerks to assist in thus disposing of the traffic (R., pp. 47, 55).

Under the tariffs and what is known as the “standard terminal rule” filed with the Interstate Commerce Commission, the carrier was under obligation for the “line-haul” rate to make one placement of the carload shipment upon an industrial siding such as the sidings here involved (R., p. 82).

DEFENCES.

The actions were defended on two grounds:

1. The service performed by the rented engine and crew was a service which the petitioners were obliged to render under the “line-haul” freight charge fixed by tariffs duly filed with the Interstate Commerce Commission, and, therefore, the contract was without a lawful consideration; and

2. The contract for the rental of the engine and crew violated the Interstate Commerce Act, and a similar law of the State, forbidding undue preferences or special contracts for expedited services.

DECISION OF THE COURT.

The Supreme Court of Appeals disposed of the case on the first ground and held the contracts void because the engine and crew were used “in the performance of a transportation service in spotting these

cars, for which service the Company has been fully paid in the line-haul rate." (R., p. 116.)

SPECIFICATION OF ERROR AND SUMMARY OF ARGUMENT.

QUESTION INVOLVED.

The question involved is:

Whether a contract by a carrier for the rental to a shipper of an engine and crew, which are thereupon put under his exclusive control, is void, because the engine and crew are used by the shipper, at his own convenience, in the performance of a transportation service included in the "line-haul" freight charge?

The Supreme Court of Appeals, answering this question in the affirmative, held:

x // "Here, the service performed by the railway employes, with the railway equipment, was the precise service which the company was then under immediate obligation to perform with reasonable promptness under the circumstances and for which it had already been paid." (R., p. 116.)

The holding and decision complained of is thought to be erroneous and the contract is believed to have been in all respects valid and enforceable, according to its terms, for the following reasons:

POINTS.

- (1) No obligation rests upon a carrier, under the "line-haul" tariff rate, to furnish switching

and "spotting" service solely for the convenience of a shipper;

(2) The obligation to place or "spot" cars, under the line-haul tariff rate, does not contemplate the furnishing of special facilities to a shipper to meet abnormal and unprecedented conditions;

(3) The contract for the rental of the engine and crew did not constitute an undue preference or an illegal expedited service.

ARGUMENT

POINT I.

NO OBLIGATION RESTS UPON A CARRIER, UNDER THE "LINE-HAUL" TARIFF RATE, TO FURNISH SWITCHING AND "SPOTTING" SERVICE SOLELY FOR THE CONVENIENCE OF A SHIPPER.

Under the "line-haul" tariff rate for carload shipments and what is spoken of as the "standard terminal rule," filed with the Interstate Commerce Commission, the shipper is ordinarily entitled to one placement of a car, free of further charge, upon industrial sidings or spur tracks, such as involved here. (R., pp. 81, 82.)

The Commission has so held, with certain exceptions such as, for instance, "interior movement of plant traffic to and from various parts of the establishment and of deliveries through a system of interior switching tracks constructed as plant facilities." (*The Los Angeles Switching Case*, 234 U. S. 294, 18 I. C. C., p. 310; see 57 I. C. C. 677, 683.) However, it has been

frequently decided by the Commission that no legal obligation rests upon a carrier to perform "spotting" service of this character solely at a shipper's convenience.

In the case of *Pittsburgh Forge & Iron Co. v. Director General*, the Commission said (59 I. C. C., 29, 32):

"Defendants are under no legal obligation to spot cars for complainant solely at its convenience, nor are shippers entitled to an allowance from the carrier for service which the carrier is ready and willing to perform because it is not convenient for it to permit the carrier to perform the service."

In the case of *Downey Shipbuilding Corp. v. S. F. R. T. Ry. Co.*, the Commission said (60 I. C. C. 543, 548):

"Whatever transportation service or facility the law requires the carrier to supply they have the right to furnish, and it does not follow, therefore, even where the line-haul or terminal delivery rate covers the movement of cars incident to the receipt and delivery of carload freight on industry spurs, or on the interior tracks of industrial plants, that the owner of the property transported may in every case receive an allowance from the carriers when he elects to perform that service."

In *Merchants' Shipbuilding Corp. v. P. R. R Co.*, the Commission said (61 I. C. C., 214, 217):

"No legal obligation, however, rests upon the carrier to perform switching and spotting service solely at a shipper's convenience, and this, in substance, is what complainant desires. Further,

it is well settled that a shipper is not entitled to an allowance from the carrier for a service which the carrier is ready and willing to perform and which the shipper performs because it is not convenient for it to permit the carrier to perform."

The engine and crew here, after the making of the contract, were under the exclusive control of the respondent and conformable to its convenience at all times during the period the contract was in force (R., pp. 23, 49, 74, 82).

By this arrangement, respondent was enabled to get better and more expeditious service than would otherwise have been possible under existing conditions (R., pp. 26, 50, 64, 69, 79).

The Supreme Court of Appeals, in declaring the contract void for supposed want of consideration, necessarily held that respondent was entitled, under the tariffs, to the exclusive use of an engine and crew—which was the precise service it received. This holding we believe to be untenable and certainly at variance with the rulings of the Interstate Commerce Commission.

POINT II.

THE OBLIGATION TO PLACE OR "SPOT" CARS, UNDER THE "LINE-HAUL" TARIFF RATE, DOES NOT CONTEMPLATE THE FURNISHING OF SPECIAL FACILITIES TO A SHIPPER TO MEET ABNORMAL AND UNPRECEDENTED CONDITIONS.

The Supreme Court of Appeals, in its decision, evidently overlooked the consideration that while it is the duty of a carrier under its line-haul rate to once "spot" a car for a shipper, this duty is subject to the

same duty which is owed to all other shippers at the same time and same place; and under the same conditions; and that consequently it is not the carrier's duty to furnish special facilities to "spot" cars for a special shipper. Such a shipper, so far as common-carrier duty is concerned, must bide his time along with all other shippers, and wait for the placement of his cars in regular course. Moreover, since a common carrier is only under obligation to furnish facilities adequate for normal conditions, if abnormal and particularly if unprecedented conditions (such as undoubtedly prevailed in the present case) exist, the carrier is under no further duty than to use such facilities as it has at hand with such reasonable dispatch as these facilities will afford, and this, too, with due regard to the equal rights of all the shippers respectively.

In *Pennsylvania R. Co. v. Puritan Coal Co.*, 237 U. S. 121, 133, this court said:

"* * * The carrier is not liable if its failure to furnish cars was the result of sudden and great demands which it had no reason to apprehend would be made, and which it could not reasonably have been expected to meet in full."

The effect of war conditions upon the obligations of carriers was considered by the Interstate Commerce Commission in *Waste Merchants Asso. v. Director General*, 57 I. C. C. 686.

In that case, it appeared that under the applicable tariffs carriers were under obligation to load and unload carload freight at New York.

In consequence of the congestion of traffic, labor conditions, and other circumstances due to the World War—occasioning great delays in the loading and delivery of freight—an arrangement was perfected between the carrier and the complaining shippers whereby the shippers undertook to do their own loading of cars and to relieve the carrier of that obligation.

The shippers subsequently filed a complaint with the Interstate Commerce Commission seeking an allowance under Section 15 of the Act.

The Commission, after adverting to the conditions under which the arrangement was made, said (p. 689):

“It is obvious * * * that the carriers did not fulfil their complete obligations under the tariffs during the prevalence of war conditions, and as a consequence the shippers were compelled to incur the expense of loading by means of their own employees. For the most part, however, had the shippers insisted on their right under the tariffs, their paper stock would have been received eventually, after long delays, along with other commodities and loaded by the carriers. Pursuing such a course, they would not have been able to ship nearly as much as they did, and the expense incident to the delays of trucks standing on long lines together with conveyances of other commodities for hours waiting to unload would have far outweighed the expense of loading the cars by their own employees. If deprived of some portion of the transportation service extended by the tariff, due to war conditions, these shippers received a consideration for such deprivation.

“The very undertaking by the carriers in their

tariffs to load carload shipments, as pointed out, is an exception to the general practice in favor of shippers at New York. There is no evidence to indicate that the rates or charges paid complainants shipments were excessive for the total transportation service actually rendered by the carrier, excluding loading.

"For any failure to observe their published tariffs the carriers may be answerable in another process. There was no alternate clause in defendant's tariffs providing for the payment of an allowance if the shipper performed the loading service and hence since all allowances to a shipper must be published in the tariffs, even if defendants desired they could not lawfully have compensated complainant's members for the loading service rendered by them. Nothing in the act requires that a shipper must be reimbursed for the transportation service that he may elect to perform primarily for his own convenience."

The Commission then quoted from Section 15 of the Interstate Commerce Act and continued:

"This provision is intended merely to provide against excessive allowances."

The Commission denied the relief prayed for and held that "under the circumstances, there was no obligation on the part of the carriers to make an allowance to complainant's members for the loading service."

At the time of the transaction in question here, the United States was engaged in a world-wide war. The nations were at Armageddon. There was a congestion of cars, equipment, traffic, freight, etc., along the ports

of the Atlantic seaboard such as had never been seen before; and the record is replete with evidence that this was particularly true of the port of Newport News. It was, therefore, not pretended in the present case that the carrier, under the pressure of such a sudden and stupendous emergency, was under obligations to have supplied cars, equipment and furnished employees and facilities sufficient to transport and deliver shipments with the same dispatch as would be expected in normal times. Consequently, more than ordinary delays in the delivery of shipments were to be expected, and in the regular course of business, were absolutely unavoidable. (R., pp. 46, 65).

It was precisely for the reason that if respondent had waited for the delivery of its cars in the regular course of business (so far as common-carrier obligations were concerned) it could not have got the shipments with the same speed and facility with which it desired to get them, that respondent decided to hire an engine and crew to "drill out" and place the cars for themselves.

Thus, Quarles, the director of operations and witness for respondent, testified (R., p. 65):

"After being out there several days and working with the C. & O. yard men in order to get the material over, I found that we were not getting anywhere, we were not getting the material, it was impossible for the service to be performed as necessary to the amount of men that we employed to unload that material and to work it up as it was unloaded, and I stated to our traffic manager, Mr. Smith, 'I don't see but one way out of this;

that will be for the C. & O. to assign us a special engine for my use entirely to handle our freight.' "

Bowie, another of respondent's witnesses, testified (R., p. 46):

"* * * the C. & O. was up against it, and it was not a case of their not wanting to deliver, it was a case of being impossible to deliver * * * while we were receiving two or three hundred cars a day, the government was receiving cars and we had to keep the tracks clear, otherwise there would be an embargo placed on Newport News and we couldn't get material past Richmond." * * *

POINT III.

THE CONTRACT FOR THE RENTAL OF THE ENGINE AND CREW DID NOT CONSTITUTE AN UNDUE PREFERENCE OR AN ILLEGAL EXPEDITED SERVICE.

(1) The contract, being one for a mere rental of equipment, was not a common-carrier service, and was in no wise illegal under the Interstate Commerce Act or otherwise.

"* * * where there is a right to refuse to perform the services requested, there is a right to contract for their performance in a different capacity from that which rests upon a railroad company as a public or common carrier."

4 *Elliott on Railroads*, 3rd ed., Sec. 2101, p. 463.

If the carrier "was under no statutory or common law obligation to render the special service it was called upon to render there were no reasons of public policy which forbade the rendition of such service upon such

terms as the parties might stipulate.”—Mr. Justice Lurton in *Clough v. Grand Central R. Co.*, 155 Fed. 81, 82.

In *Santa Fe, &c., R. Co. v. Grant Bros. Cons. Co.*, 228 U. S., 177, 185, Mr. Justice Hughes said, referring to the principle that a common carrier cannot contract against its negligence:

“Manifestly, this rule has no application when a railroad is acting outside the performance of its duty as a common carrier. In such case it is dealing with matters involving ordinary considerations of contractual relation; those who choose to enter into engagements with it are not at a disadvantage; and its stipulations even against liability for its own neglect are not repugnant to the requirements of public service. The rule extends no further than the reason for it. It is apparent that there may be special engagements which are not embraced in its duty as a common carrier, although their performance may incidentally involve actual transportation of persons and things, whose carriage in other circumstances might be within its public obligation.”

See *Chicago, &c. R. Co. v. Maucher*, 248 U. S. 359.

Compare *Davis v. Cornwell*, 264 U. S. 560, where the principle is referred to.

That the rental or letting out of equipment by carriers, for a special service as, for instance, to a circus, is not within ordinary common-carrier duties is recognized in *Chicago, &c., R. Co. v. Maucher, supra*, and has been so held in many decisions of State and Federal courts:

Clough v. Grand Trunk R. Co., supra;
Robertson v. Old Colony R. Co., 156 Mass. 525;
Coup v. Wabash, &c., R. Co., 56 Mich. 111;
Forepaugh v. Del., &c., R. Co., 128 Pa. 217;
Chicago, &c., R. Co. v. Wallace, 66 Fed. 506, 14
C. C. A. 257;
Wilson v. Atlantic, &c., R. Co., 129 Fed. 774;
Yazoo & M. V. R. Co. v. Crawford, 107 Miss. 355;
Sager v. Northern Par. R. Co., 166 Fed. 526.

Clearly a carrier cannot be required by a shipper to give him the exclusive use of an engine and crew, and that is the identical service which respondent got here.

(2) If the question of a preferential or expedited service is here involved, it is believed the failure to exact payment for the engine and crew will constitute a preference, since *respondent is thereby given a preference over other shippers during the term of this contract of a service valued by the parties themselves at the sum of \$13,298.93.*

C. & A. R. Co. v. Kirby, 225 U. S. 155;
Davis v. Cornwell, supra.

Upon the facts shown in this record it seems clear that the failure to exact compensation from respondent for the use of the engine and crew would give it a special advantage over other shippers at the port of Newport News, during the period covered by the contract, and would constitute a preference under the *Kirby* and *Cornwell Cases*, assuming that the Act of Congress hereinafter cited does not apply.

It by no means follows from the above, as was contended, that this argument involves a concession that

the rental of the engine and crew was a common-carrier or transportation service. Preferences and discriminations, in violation of the Acts of Congress, may as well result from acts not within common-carrier duties or transportation service, as otherwise.

New Haven R. Co. v. Interstate Commerce Commission, 200 U. S. 361;

United States v. Union Stock, &c., Co., 226 U. S. 307.

(3) The record shows that the respondent was constructing embarkation facilities at Newport News for the government, in war time, on a contract for emergency work. (R., p. 96.) A large part of the shipments involved were ordered by the Construction Division of the War Department, and some of them were "military strictly" (R., pp. 71, 72). The construction officers of the War Department were urging the utmost expedition (R., p. 71). Furthermore, the cantonments under construction were for embarkation purposes—a purely military facility.

The contract upon which the suits are premised was one in which the government was vitally interested. Certain it is, that it concerned the "military traffic."

It follows then that the shipments handled by the leased engine were shipments for the United States Government of war materials in time of a national emergency.

In the preamble to the contract between the government and the construction company, it was recited, among other things, that:

"The Congress having declared by joint resolution, approved April 6, 1917, that war exists between the United States of America and Germany, a national emergency exists and the United States urgently requires the immediate performance of the work hereinafter described, and it is necessary that said work shall be completed within the shortest possible time." (R., p. 97.)

In view of these considerations, it was agreed between the government and the construction company that the work should be done "in the shortest possible time," and that it would begin the work specified at the earliest time practicable and diligently proceed so that such work be completed at the earliest possible date.

By an amendment to Section 6 of the Interstate Commerce Act, of August 29th, 1916 (39 St. at L. 604), it is provided:

"That in time of war or threatened war preference and precedence shall, upon demand of the President of the United States, be given over all other traffic for the transportation of troops and material of war, *and carriers shall adopt every means within their control to facilitate and expedite the military traffic.* And in time of peace shipments consigned to agents of the United States for its use shall be delivered by the carriers as promptly as possible and without regard to any embargo that may have been declared, and no such embargo shall apply to shipments so consigned * * *." (Italics supplied.)

It is apparent also that Section 3, paragraph (1) of the Interstate Commerce Act, forbidding carriers

from giving "any undue or unreasonable preference or advantage, to any particular person, company, firm, corporation, or locality, * * *" and other provisions *in pari materia* therewith, under which it was urged the contract between the Railway Company and the Construction Company was illegal—does not refer to such a preference or advantage given the government itself as was the case here (R., p. 80). A sovereign is not ordinarily amenable to laws made for its subjects. In order for such to be the case, there must be clear and unequivocal language by the law-making power to that effect. This is emphasized by the fact of the imposition of heavy penalties by the acts of Congress for their violation. Surely the government did not contemplate penalizing itself.

In the proclamation of the President assuming control of the railroads under authority of the Acts of Congress, effective at midnight, December 31, 1917, during the term of the contract here involved, such control was taken expressly for the purpose and "to the end that such systems of transportation be utilized for the transfer and transportation of troops, war material and equipment, *to the exclusion as far as may be necessary of all other traffic thereof*." (Italics supplied.)

A consideration of the facts of this case in the light of these Acts of Congress and the proclamation of the President in connection therewith, seems to us a conclusive answer to the contention of the respondent that it should be excused from the performance of its contract because it was the beneficiary of an "expedited" or preferential service thereunder, which it now claims to have been illegal.

Obviously, of course, it does not follow from the Act of Congress quoted that the carrier was required to put its equipment at the disposal of the government, without consideration.

CONCLUSION.

In conclusion it is urged that the judgments of the Supreme Court of Appeals are erroneous, for the reasons given, and should be reversed.

DAVID H. LEAKE,
WALTER LEAKE,
SHERLOCK BRONSON,
A. A. McLAUGHLIN,
Counsel for Petitioners.

APPENDICES.

SECTION 3, PAR. (1) OF INTERSTATE COMMERCE ACT, FEB. 4, 1887, C. 104, 24 STAT. AT L. 379:

That it shall be unlawful for any common carrier subject to the provisions of this Act, to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

SECTION 6, PAR. (8) OF INTERSTATE COMMERCE ACT, AS AMENDED AUG. 29, 1916, C. 417, 39 STAT. AT L. 604:

That in time of war or threatened war preference and precedence shall, upon the demand of the President of the United States, be given over all other traffic for the transportation of troops and material of war, and carriers shall adopt every means within their control to facilitate and expedite the military traffic. And in time of peace shipments consigned to agents of the United States for its use shall be delivered by the carriers as promptly as possible and without regard to any embargo that may have been declared, and no such embargo shall apply to shipments so consigned.

**SECTION 15, PAR. (13) OF INTERSTATE COMMERCE ACT AS
AMENDED JUNE 29, 1906, C. 3591, 34 STAT. AT L. 584:**

If the owner of property transported under this act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for under this section.